

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,682
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitation Services (SRS) to revoke her family day care license based upon her being out of compliance with requirements of the Vermont Department of Taxes and misrepresenting her tax status on her applications for day care licensure.

FINDINGS OF FACT

1. The petitioner has had a day care license for about ten years. She is currently licensed to care for twenty-eight children.

2. As part of operating her day care the petitioner has filed annual reapplications for licensure with SRS. One of the sections on the application form is a "Tax Compliance Statement". This section includes the following statement for the applicant to sign:

I hereby certify, under pains and penalties of perjury, that I am in good standing with respect to, or in full compliance with a plan approved by the Commissioner of Taxes to pay (sic) any and all taxes due the State of Vermont as of the date of this application, as required by 32 V.S.A. Section 3113.

3. This section on the application form also includes an "Alternate Certification" whereby if an applicant is not

in good standing with the Tax Department she can certify that she "will arrange with the Department of Taxes to bring myself into good standing or . . . will seek a determination that immediate payment would impose an unreasonable hardship."

4. In a license reapplication dated March 20, 1996, the petitioner checked both the Tax Compliance Statement and the Alternate Certification. There is no evidence that SRS followed up on this discrepancy, however, and the petitioner was issued a renewal of her day care license following the submission of that reapplication.

5. On license reapplication forms dated June 9, 1997, and May 25, 1998, the petitioner signed only the Tax Compliance Statement.

6. In fact, the petitioner had failed to pay her Vermont income taxes for the years 1991, 1992, 1993, and 1994. On May 1, 1996, the Tax Department filed suit against her for those delinquent taxes.

7. On June 25, 1996, the petitioner entered into a "Payment Agreement" with the Tax Department that included a promise to pay \$400 a month toward her past due taxes commencing July 15, 1996, and a provision that "any breach of any of the terms or conditions of this agreement shall render this agreement null and void".

8. The petitioner made only one payment under this agreement, on August 13, 1996, and no others in 1996, and

only sporadic payments thereafter. She also did not file timely tax returns for 1995, 1996, or 1997. The Tax Department sent the petitioner quarterly bills showing her arrearage, but it took no other action regarding the petitioner's noncompliance.

9. Despite her noncompliance with the above agreement the petitioner certified to SRS on June 9, 1997, and May 25, 1998 (see paragraphs 2 and 5, supra), that she was in compliance with her taxes.

10. On August 31, 1998, the Department of Taxes notified SRS of the petitioner's tax noncompliance and requested SRS to revoke her day care license (see infra).

11. On September 2, 1998, SRS notified the petitioner that it intended to revoke her day care license because of her not meeting requirements of the Department of Taxes.

12. Following a Commissioner's Review Hearing on November 9, 1998, SRS affirmed its revocation decision based on the petitioner not being in compliance with her taxes and having provided false information to SRS regarding her tax status.

13. On January 6, 1999, the petitioner entered into another agreement with the Department of Taxes regarding payment of her back taxes. As of the date of the hearing in this matter on February 3, 1999, the petitioner was in compliance with that agreement.

14. The petitioner testified at the hearing that when

she signed the agreement with the Tax Department in 1996, she was orally instructed to call that Department if she could not pay any month's bill on time, although she admits she only called the Department once. She maintains that she did not understand that her nonpayment would render the agreement null and void. She also testified that when she signed her reapplications for day care licensure in 1997 and 1998 she thought that because the Tax Department had taken no further action against her (other than continuously sending her bills for her arrearage) she understood that she was in "good standing" with the Department of Taxes.

15. The petitioner also testified that beginning with her father's death in October, 1995, she suffered a series of personal tragedies and health problems that left her unable to cope with financial problems she was having at that time.

16. Although the petitioner did not strike the hearing officer as sophisticated, she certainly appeared intelligent enough to read and understand the documents she signed with the Department of Taxes and SRS. She had also had many prior dealings with the Tax Department. Her testimony regarding her misunderstanding of the provisions of her day care license reapplication regarding her taxes (see supra) cannot be credited. It is found that the petitioner knew that she was not in "good standing" with the Tax Department when she filed her day care license reapplications with SRS

for 1997 and 1998.

ORDER

The Department's decision is affirmed.

REASONS

32 V.S.A. § 3113 includes the following provisions:

(f) Upon written request by the commissioner (of the Department of Taxes) and after notice and hearing to the licensee as required under any applicable provision of law, an agency shall revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person if the agency finds that taxes administered by the commissioner have not been paid and that the taxpayer's liability for such taxes is not under appeal. For purposes of such findings, the written representation to that effect by the commissioner to the agency shall constitute prima facie evidence thereof. The commissioner shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the agency with respect to such license revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the agency receives a certificate issued by the commissioner that the licensee is in good standing with respect to any and all taxes payable to the commissioner as of the date of issuance of such certificate. Any person aggrieved by the decision of the agency may appeal therefrom in accordance with the provisions of chapter 25 of Title 3.

(g) For the purposes of this section, a person is in good standing with respect to any and all taxes payable if:

- (1) no taxes are due and payable;

(2) the liability for any taxes due and payable is on appeal;

(3) the person is in compliance with a payment plan approved by the commissioner; or

(4) in the case of a licensee, the agency finds that requiring immediate payment of taxes due and payable would impose an unreasonable hardship.

If the agency finds an unreasonable hardship, it may condition renewal on terms which will place the person in good standing with respect to any and all taxes as soon as reasonably possible.

(h) Any person who knowingly makes or subscribes any return, statement or other document under this title which contains or is verified by an unsworn written declaration that is made under the pains and penalties or perjury and which is not true and correct as to every material matter shall be fined not more than \$10,000.00 and imprisoned not more than 15 years, or both.

Section A (8) of the SRS Children's Day Care Licensing Regulations provides that a licensee "shall meet all applicable requirements of the . . . Vermont Department of Taxes. . . ."

In this case, the petitioner does not dispute that she did not pay her taxes for 1991, 1992, 1993, and 1994 pursuant to her Payment Agreement with the Department of Taxes in 1996. Therefore, it must be concluded that SRS was required under the above statute to revoke the petitioner's day care license. Furthermore, this action appears to have been required by SRS whether or not the petitioner understood her standing with the Tax Department when she filed her reapplications for her day care license.

As noted above, however, by the time of her fair

hearing the petitioner had entered into another Payment Agreement with the Department of Taxes that she appears to be in compliance with. Thus, it appears that she has now purged herself of this basis of SRS's revocation of her day care license.

However, as also noted above, SRS also gave as a reason for its revocation of the petitioner's license the fact that the petitioner provided false information to SRS regarding her taxes on her reapplications for licensure.

Section M (10) of the SRS day care regulations provides: "A licensee or applicant providing false information or who causes the Division to receive false information, may have their license denied, suspended and/or revoked." As found above, the Department has established that the petitioner knowingly provided false information regarding her tax status when she filed her reapplications for day care licensure in 1997 and 1998.

33 V.S.A. § 306(b)(3) and 3 V.S.A. § 814 authorize the Commissioner of Social and Rehabilitation Services to issue licenses for day care facilities, promulgate regulations applicable to those facilities, and to deny or terminate licenses for "cause after hearing". Given the above findings, which support the factual basis of the Department's decision, the sole issue remaining in this matter is whether the Commissioner abused his discretion in determining that the violation of Section M (10) of the

regulations was cause for revocation of the petitioner's day care license. Based on the evidence, it cannot be concluded that the Commissioner was arbitrary or biased in concluding that the petitioner's dishonesty in filling out her reapplications is sufficient cause to revoke her day care license. Therefore, the Department's decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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